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THE ROLE OF 'GREEN' COURTS IN SHAPING ENVIRONMENTAL JUSTICE IN INDIA AND NEW ZEALAND

ROLA „ZIELONYCH" SĄDÓW W KSZTAŁTOWANIU SPRAWIEDLIWOŚCI ŚRODOWISKOWEJ W INDIACH I NOWEJ ZELANDII

The depreciation of values, combined with the expansion of agriculture, industry and the economy, results in the erosion of existing protection mechanisms, as well as commodification and dominance of economic factors. The increasing degradation of the natural environment reveals an increasing number of areas requiring urgent and coordinated protection. The aim of the article is to present the innovative concept of green courts, which are creating a new architecture of modern environmental law. In the considerations, it is indicated that 'green' courts at a national level open the way to formulate new legal institutions, facilitate more effective the enforcement of environmental law, and solve legal disputes with alternative adjudicative processes. The article discusses environmental justice based on the example of India and New Zealand, which are among the first countries in the world to have developed an innovative judicial structure and environmental case law. The dogmatic method plays an essential role in the analysis of legal norms concerning the protection of environment, as well as in determining their content and scope. The source materials originate from various legal orders, and diverse cultural and geographical regions. Therefore, in order to discuss the indicated issues, it is necessary to use the comparative method, and thus complete the arguments of a dogmatic and legal nature. In order to present the origins and evolution of law in the scope concerning 'green' courts, the historical and legal method is used (temporal retrospection). The considerations emphasize the role of specialist 'green' courts in maintaining a balance between the economy, the development of society, and protecting the environmental wellbeing by shifting the focus of jurisprudence to the environmental domain. The article highlights the role of the application and interpretation of environmental norms from an ethical and intergenerational perspective.

Keywords: environmental law; environmental justice; National Green Tribunal in India; New Zealand Environment Court; ecological values

Deprecjacja wartości, ekspansja rolnictwa, przemysłu i gospodarki powodują erozję dotychczasowych mechanizmów ochrony, komodyfikację i dominantę czynników ekonomicznych.

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Zwiększająca się degradacja środowiska naturalnego ukazuje coraz więcej obszarów wymagających pilnej i skoordynowanej ochrony. Celem artykułu jest przedstawienie innowacyjnej koncepcji zielonych sądów, które tworzą nową architekturę współczesnego prawa ochrony środowiska. W rozważaniach wykazano, że „zielone" sądy na poziomie krajowym otwierają drogę do formułowania nowych instytucji prawnych, skuteczniejszego egzekwowania prawa ochrony środowiska oraz rozwiązywania sporów prawnych za pomocą alternatywnych procesów orzeczniczych. Artykuł przedstawia sprawiedliwość środowiskową na przykładzie Indii i Nowej Zelandii, które jako jedne z pierwszych krajów na świecie rozwinęły innowacyjną strukturę sądowniczą i orzecznictwo środowiskowe. Zasadniczą rolę podczas analizy norm prawa środowiska, ustalania ich treści i zakresu pełni metoda dogmatyczna. Materiały źródłowe wywodzą się z różnych porządków prawnych, regionów kulturowych i geograficznych. Stąd w celu omówienia zasygnalizowanych zagadnień zastosowano metodę komparatystyczną, która dopełnia wywody o charakterze dogmatycznoprawnym. W celu przedstawienia genezy i ewolucji prawa w zakresie kształtowania „zielonych" sądów posłużono się metodą historycznoprawną (retrospekcja temporalna). W ramach rozważań wnioskowanie oscyluje wokół podkreślenia roli specjalistycznych „zielonych" sądów we wspieraniu zachowywania równowagi między gospodarką, rozwojem społecznym a ochroną dobrostanu środowiska poprzez przesunięcie punktu w orzecznictwie na domenę środowiskową. Przeprowadzone rozważania podkreślają rolę stosowania i interpretacji norm prawa ochrony środowiska z perspektywy etycznej i intergeneracyjnej.

Słowa kluczowe: prawo ochrony środowiska; sprawiedliwość środowiskowa; Narodowy Zielony Trybunał w Indiach; Trybunał Środowiskowy Nowej Zelandii; wartości ekologiczne

I. INTRODUCTION

The global ecological crisis is prompting the search for more effective environmental protection mechanisms. The growth of agriculture, the economy and industry is causing an increase in the intensity of devastation of natural areas, and is leading to the erosion of flora and fauna biodiversity. As a result of environmental discrimination, many of the Earth's inhabitants do not have access to unspoilt natural areas, healthy food or ecological public services. The ecological crisis deepens diversification, and generates social conflicts and tensions. The constant spread of degraded areas intensifies debates about enabling citizens to participate in the decision-making process in environmental matters. Actions to that effect involve the need to balance political and economic activity with the requirements of environmental protection. Building environmental justice requires restructuring the current model of the economy in compliance with the principle of sustainable development. Therefore, institutional mechanisms play an important role in environmental activity, which could contribute to ensuring greater efficiency in the application and interpretation of environmental standards.

The number of the so-called 'green' courts, which are jurisdictional structures oriented towards dealing with environmental cases, is gradually increasing. Depending on national circumstances, several models in the structure of

'green' courts can be distinguished. Judicial authorities are set up on the basis of internal specialization (e.g. the creation of chambers, environmental sections in the judicial branch of government) or by the establishment of environmental tribunals (administrative or executive branch).[1] A common feature of 'green' courts is the handling of cases of *stricte* environmental nature.[2] The interpretation of standards carried out by environmental judges contributes to the systematization of regulations and to the streamlining of decisions issued in environmental cases. As a result, 'green' courts can contribute to improving the settling of environmental disputes.

II. RESEARCH METHODS

The dogmatic-formal method was used in the analysis of legal acts and documents. The global nature of environmental problems opens up a broader research perspective, which has to take into account human interactions with nature. Due to the fact that the subject matter contains a cross-border component, the comparative method was applied in the research. In order to show the role of 'green' courts, a temporal retrospection was carried out. A historical overview allows factors to be captured that affect the articulation of the content of environmental standards. As a result, it is possible to identify gaps or loopholes in the legislative areas that need to be reformed, as instead of protecting the environment they may lead to the arbitrary application of environmental legislation. The research conducted will show the importance of 'green' courts in the building of environmental justice.

III. THE GENESIS OF INSTITUTIONALIZATION IN ENVIRONMENTAL PROTECTION

The UN 2022 Report 'The Sustainable Development Goals' sounded the alarm that 'the world is on the brink of a climate catastrophe'.[3] Due to urbanization, the over-exploitation of natural resources, and human interference in the delicate biological balance, the devastation of natural areas is progressing at a rapid pace. The lack of effective preventive and protective measures affects the existence of present and future generations. More than half of the

[1] United Nations Environment Programme, Environmental Courts and Tribunals – 2021. A Guide for Policymakers, Nairobi 2022 [hereinafter: UNEP 2022]: 11, https://wedocs.unep.org/20.500.11822/40309.

[2] There's a specific term in literature in this regard 'one stop shop' or single window for all environmental 'adjudication'; Sharma (2008): 60.

[3] United Nations, Department of Economic and Social Affairs (DESA), The Sustainable Development Goals Report (2022): 52.

world's natural resources are consumed in the Asia-Pacific region.[4] Many raw materials are non-renewable.

The development of contemporary environmental movements and the deliberations of international environmental conferences contributed to the shaping of the legal basis for institutionalization in environmental protection. In order to develop more effective protection mechanisms, the UN adopted the Resolution 'Transforming our World: the 2030 Agenda for Sustainable Development."[5] The role of sustainable exploitation of our planet's resources and efforts to improve the climate have been highlighted in environmental protection measures. Achieving the established objectives and targets requires the transformation of national environmental management systems and the economy, as well as social development. The agenda is implemented in keeping with the identity of states and the principles of national legal systems. The resolution defines the objectives and tasks which are further specified at the regional level. In order to implement the principle of sustainable development in the field of the environment, it is necessary to guarantee an appropriate institutional framework. For this reason, goal 16 indicates access to judicial authorities.[6] 'Green' courts currently play a significant role in providing access to specialized judicial bodies in environmental matters.

Environmental courts ensure a multidimensional handling of cases by combining the knowledge and experience of lawyers with that of nature protection practitioners. The construction of 'green' courts makes it possible to accelerate the handling of cases and to make greater use of modern technologies in the hearings, which in turn contributes to the breaching of the bureaucratic procedures currently present in the general judiciary. An important feature of environmental courts is the possibility of alternative dispute resolution.

According to Domenico Amirante, approximately 360 environmental courts and tribunals operated worldwide between September 2010 and January 2012.[7] While in 2016 Catherine and George Pring pointed to the institutional 'explosion' in this respect, stating that on a global scale, more than 1,200 specialized environmental tribunals operated in at least 44 countries'.[8] According to UNEP, there were 2115 'green' courts in 67 countries in 2021.[9]

Due to the broad scope of the subject matter, this article will discuss environmental justice based on the example of India and New Zealand. It bears pointing out that India and New Zealand are among the first countries in the world to have developed innovative environmental case law. However, the anthropogenic causes and institutional solutions of environmental justice in

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[4] United Nations, Economic and Social Commission for Asia and the Pacific (ESCAP), Regional Road Map for Implementing the 2030 Agenda for Sustainable Development in Asia and the Pacific (2017): 16.

[5] Resolution adopted by the General Assembly on 25 September 2015, A/RES/70/1. Transforming our World: the 2030 Agenda for Sustainable Development (hereinafter: Resolution 2015).

[6] Resolution (2015): 25.

[7] Amirante (2012): 445.

[8] Pring, Pring (2016): IV and 1. Similarly Warnock (2020): 24.

[9] UNEP (2022): 11.

these countries are not entirely identical. It is possible to distinguish fundamental differences that result from the conditions of a given country, and thus its legislation, needs, and environmental challenges.

IV. NATIONAL GREEN TRIBUNAL IN INDIA

In India the Environment (Protection) Act was adopted on 23 May 1986. Environmental management draws attention to the need to develop a more effective mechanism for protecting and repairing damage to nature. The key legal principles for environmental protection have been given constitutional status in India. Protection of life is guaranteed, pursuant to Article 21 of the Constitution of India.[10] This provision can refer to the protection of the human environment and processes that affect developments occurring in nature. This is due to the fact that in the culture of India there is a vision of the world based on the idea of the unity and substantial homogeneity of all life: across the divine, human and natural spheres. The application of environmental standards should, therefore, emphasize the need to take into account the interrelationships and interactions between the natural world and humans.[11]

India's growing population, social diversification, poverty, expansion of 'aggressive' industry, and lack of effective enforcement mechanisms, including safety standards, render many people the victims of accidents, as well as industrial and environmental disasters. Increasing environmental degradation threatens ecosystems and human lives. Social exclusion caused by the degradation of the environment of human life decreases ecological awareness in India, which is often dubbed 'the land of spirituality and philosophy'.[12] Actions for environmental justice aim to identify the aggrieved individuals and guarantee them access to a specialized judicial authority.

The decision whether to appoint an environmental court with a national jurisdiction or to locate it in a concrete administrative unit requires a multifaceted analysis, knowledge of conditions *sensu largo*, and taking into account the national legal tradition. In the 1990s, India attempted to create the National Environment Tribunal (1995) and the National Environment Appellate Authority (1997). At that time, however, actions in this direction did not bring the expected result.[13] Work to that end was completed in 2010, when the National Green Tribunal (NGT) was established under the Act of

[10] The Constitution of India (As on 26th November, 2021 with amendments).

[11] The above argumentation, corresponds with The Environment (Protection) Act, 23 May 1986 (Act No. 29 of 1986) under which 'the environment' includes water, land and air, plants, micro-organisms, other living creatures and the inter-relationships between them and human: Article 2, ch. 1, pt. 'a'.

[12] Saheb, Seshaiah, Viswanath (2012): 50.

[13] Law Commission of India, One Hundred Eighty Sixth Report on Proposal to Constitute Environment Courts, 23 September 2003, New Delhi (2003): 6.

2 June (NGTA).[14] The Court has jurisdiction to hear questions regarding all substantive environmental matters, which also covers appeals against decisions of central authorities and state government agencies.

In India, the Supreme Court contributed to shaping the principles and legal institutions that became the cornerstone of environmental justice.[15] The creation of an environmental tribunal required the adoption of a broader legislative and ecological perspective. Taking into account the need to conduct an objective analysis of documents and an assessment of the facts, the Supreme Court indicated that the environmental tribunal should include persons who have practical knowledge.[16] A lack of expert opinions may result in detachment of the judicial process from the actual status and needs of environmental protection. Natural scientific expertise in course of analysing environmental decisions are an essential, integral part of the judicial procedure. Where there is a fear of serious and irreparable damage to the environment, a lack of scientific certainty[17] should not result in the cessation of protective and preventive measures.

At present, the Tribunal is composed of the Chairperson, 6 Judicial Members and 5 Expert Members. The composition of the tribunal was given a symbiotic character unique to India.[18] The cooperation of legal specialists with experts enables efficient resolution of cases that, in addition to being consistent with the regulations, is also based on the knowledge of people with non-legal qualifications. The dynamic judicial process allows for innovative solutions that take into account the expansion of anthropogenic activity and technological changes. Scientific experts participate in the figurative opening of the court doors, which allows one to see the essence of a given environmental issue from a broader perspective and determine the aggrieved individuals. The implementation of participatory parity is facilitated by low court fees. It is also possible to appear in court without the assistance of a lawyer and to speak in your own language, which is especially significant for the indigenous population. In contrast to common courts, cases at the environmental court do not have to be filed by persons directly harmed, but rather by anyone invoking the public interest. The environmental court guarantees actual access to the court to people from different social circles. It should be pointed out that environmental justice, in addition to social participation, assumes the reformulation of the current model of environmental protection. Protection mechanisms should be linked to the repair of damage in areas which are suitable for rehabilitation.[19] People's economic status, skin colour or ethnic origin should not constitute an excuse for the deterioration of the state of the natural environment around them. This is the so-called disproportionality of pollutants/

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[14] The National Green Tribunal Act (NGTA), 2 June, 2010, No. 19.

[15] Divan, Rosencranz (2022): 110–111, 112.

[16] Judgment of the Supreme Court of India in *A.P. Pollution Control Board vs M.V. Nayudu:* 1999(2) SCC 718, 2001(2) SCC 62. See Article 5 pt. 2, ch. II, NGTA (2010).

[17] Khera (2019): 19.

[18] Gill (2020): 86.

[19] Lau, Cha (2007): IX.

environmental hazards and their effects.[20] Therefore, environmental justice, in conjunction with social equality and human rights, emerges as one of the main conditions for the realization of the right to a healthy environment. The institution that supports the implementation of fundamental human rights in this respect is the National Green Tribunal (NGT).

The headquarters (principal bench) of the National Green Tribunal is in New Delhi. Sittings can also be held in Bhopal, Chennai, Kolkata, and Pune. If the regional benches are not complete, remote communication systems may be used and the judges in New Delhi may hear the case. NGT experts include individuals with education or proven experience and practice in the fields of environmental protection, forest conservation, including environmental impact assessment of investments, biological diversity management, and control of phenomena and processes that may lead to the devastation of natural areas. Scientific knowledge is not static and enumerative. Therefore, environmental standards require continuous updating based on reliable and impartial empirical research, which should not be determined by economics or politics.

The main objectives of the NGT are outlined in the Preamble to the Act of 2 June 2010. The Tribunal seeks to deal with environmental issues in a multifaceted way, with a view to preserving forests and other natural resources and reforming the procedures for granting compensation for environmental damage. Detailed competences are specified in the further provisions of the Act. The NGT adjudicates in all civil cases in substantial questions relating to environment and in matters that arise from the legal documents specified in Schedule I of the Act establishing the National Green Tribunal (NGTA).[21] According to Article 19, the Tribunal is not bound by the provisions of the Code of Civil Procedure. It should be stressed, however, that the Tribunal shall have for the purposes of discharging functions under the NGTA the same powers as are vested in a civil court under the Code of Civil Procedure in the scope, for example by taking examining witnesses on oath, receiving evidence on affidavits, dismissing applications or examining them *ex parte*, issuing interim orders, and passing decisions on the order to cease committing violations referred to in Schedule I.[22] In principle, the NGT hears cases that have been received within 6 months from the date of the cause of action.[23] Considering that the effects of environmental pollution may become apparent after a long period of time, there are voices proposing that this period is insufficient.[24] Decisions, awards and orders of the 'green' tribunal may be appealed against at

[20] Holifield (2001): 80. See Clark, Miles (2021): 1.

[21] Article 14(1), ch. III, NGTA (2010). Among the legal acts mentioned in Schedule I can be included, e.g. The Water (Prevention and Control of Pollution) Act, 23 March 1974 (No. 6 of 1974); The Forest (Conservation) Act, 1980, 27 December 1980 (No. 69 of 1980); The Environment (Protection) Act, 23 May 1986 (Act No. 29 of 1986); The Biological Diversity Act, 5 February 2003 (No. 18 of 2003).

[22] Legal basis: Article 19(4) pt. 'a', 'c', 'g', 'i'–'j', ch. III, NGTA (2010).

[23] See Article 14(3), ch. III, NGTA (2010).

[24] Pandey (2017): 47–48.

the Supreme Court within 90 days.[25] The appeal may be filed on the terms set out in Article 100 of the Civil Procedure Code.[26]

When adjudicating, the judges of the NGT are guided by the principles of natural justice. The term 'natural justice' [Article 19(1)] refers to an innate sense of justice. In relation to environmental matters, this expression takes on a deeper meaning, focusing on the principles on which nature operates. According to the available information, approximately 35% of the cases (data from 2018) heard by the NGT concerned the assessment of the environmental impact of investments. Cases have been brought against the State for failure to exercise due diligence or control over the environmental impact of investments when issuing permits to state agencies or private entrepreneurs.[27] The right of access to the environmental court in India is actively exercised by non-governmental organizations (NGOs) who act on behalf of the aggrieved individuals. The cases examined by the NGT can be classified into 'green issues' (e.g. depletion of drinking water due to pollution of the river by power plants, reduction of fish numbers and agricultural crops for the same reason; threat of biological waste); 'brown issues' (e.g. lack of disposal of electronic waste; noise resulting from loud operation of power generators, roaring sirens and horns on the streets); 'land use planning issues' (e.g. protests of the population against the construction of solid waste management plants or textile dyeing plants).[28]

At the beginning of the twenty-first century, the number of transboundary environmental disasters increased at an alarming pace. Excessive exploitation causes biological havoc and the reduction of diversity in ecosystems, which will be felt for decades. Issuing a decision should be preceded by a broader examination, involving the identification of the actual applicants and their objectives in pursuing investment permits. The Tribunal also tries cases brought by foreign entities, for example an environmental permit for investments in the state of Orissa granted to the South Korean Pohang Steel Company (POSCO).[29] These territories are rich in resources such as coal, iron, chromite, and manganese ore.[30] Reforms were carried out in the state of Orissa to facilitate the undertaking of ventures by foreign investors. The influx of foreign capital has enabled the creation of new jobs and the employment activation of locals.

It should be emphasized that the principle of sustainable development plays a special role in this respect, the implementation of which consists in balancing economic activity with social development and nature protection. In the principle of sustainable development under Indian law, emphasis is placed on preserving intergenerational equity. Following this line of reasoning, economic development should be profiled so as not to exploit natural resources beyond the justified and necessary social needs. The precautionary principle

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[25] Legal basis: Article 22, ch. III, NGTA (2010).
[26] Article 100, The Code of Civil Procedure, 21 March 1908 (No. 5 of 1908).
[27] Brara (2018): 6.
[28] Brara (2018): 5–6.
[29] Prusty (2018): 79–84.
[30] Prusty (2018): 79.

and polluter pays principle are particularly emphasized in India. Where possible, devastated areas should be restored to their previous state, and excessive consumption and exploitation of natural resources should be limited. It should be pointed out that in order to ensure ecological safety, it is first and foremost necessary to take action to eliminate the causes of phenomena and processes that may lead to the devastation of nature.

In India, sensitive environmental issues include, for example, contamination of the Ganges and Jamuna rivers, aquatic ecosystems,[31] air pollution, landfills for toxic substances and industrial waste, and massive deforestation. Deforestation causes the disappearance of plant and animal habitats, an increase in natural disasters, and negative climatic phenomena. In 2021, the capital of India had the highest smog rates in the world.[32] The creation of an environmental court was adopted with the hope of reforming and accelerating the handling of environmental matters, and consequently reducing environmental degradation and developing climate justice.[33] The judicial system in India was affected by dilatoriness, which was caused by an excess of cases and the inefficiency of the existing procedures. According to the Indian lawyer Ritwick Dutta, who participates in the proceedings before the NGT, the Tribunal, as the epicentre of the national environmental movement, has become 'the first and last recourse for people because their local governments are not doing the job of protecting the environment'.[34]

V. ENVIRONMENTAL SPECIALIZATION IN NEW ZEALAND

In New Zealand, cities support ecosystem services that aim to ensure social development in a healthy and clean environment. Environmental services are provided by natural systems. Urban infrastructure – including construction, transport, recreation, and organic suburban agriculture – are offered while respecting natural resources. The development of urban infrastructure takes into account environmentally sensitive areas. The integration of green areas into the urban fabric is aimed at transforming cities into eco-cities.[35] Due to geographical isolation, there are not many phenomena in New Zealand that result in devastation of the environment, but which are recorded in other regions of the world. New Zealand is characterized by a large biodiversity of plants and animals, many species are endemic. However, we can observe a gradual increase in the negative effects of anthropogenic activity. For example, the construction of weirs, dams and other hydrological facilities changes

[31] In India, the rate of pollution of aquatic ecosystems and rivers is increasing. On the Indian subcontinent, 30% of the main Himalayan rivers are biologically dead. Chaturvedi (2019): 4. Their water is unfit for human consumption.

[32] Sahin et al. (2022): 5415–5433.

[33] Dhanda (2019): 1; Kumar (2020): 312.

[34] Quoted from: Pring, Pring (2016): 35.

[35] Meurk et al. (2013): 254.

the natural current of rivers and the ecosystem. Modifications of rivers reduce fish migration and the development of diversity of aquatic organisms. The melting of glaciers has increased alarmingly in the last few years. The volume of glaciers in New Zealand decreased by 35% between the years 1978 and 2020.[36] These changes are caused by negative climate change.

The modern environmental judiciary in New Zealand was preceded by the Planning Tribunal (PT),[37] established under Article 128(1) of the Town and Country Planning Act (TCPA).[38] The Tribunal was given the status of court of record and had a narrowed substantive scope. Jurisdiction beyond spatial planning was granted to the New Zealand Environment Court (NZEC), constituted under the Resource Management Act (RMA) 1991. Thus the 'green' court in New Zealand is one of the oldest environmental courts in the world.[39] Currently, there are 10 judges at the NZEC (including the Chief Environment Court Judge, 7 Environment Judges and 2 Alternate Environment Judges) and 15 Environment Commissioners (12 Commissioners, 3 Deputy Commissioners). The Court combines judicial and expert functions, as the court is composed of persons who have technical knowledge.[40] In a situation of rapid proliferation of legal standards, the NZEC contributes to the elimination of discrepancies between the authorities and environmental protection institutions. Over time, the NZEC has become the chief arbiter in environmental matters, creating a new framework for environmental management based on the principle of sustainable development.[41] The Court interprets this principle as a multifaceted integration of social, environmental and economic factors, opening the way for wider participation of citizens in environmental decision--making. In this way, a 'judicial culture'[42] is also formed, in which technocratic values should not obscure fact-based judgements in cases with ecological aspects.

The Court has a 'free-standing' character, which means that, under Article 269(1), it may regulate the conduct of proceedings in cases which it considers appropriate, except in cases provided for by the RMA. This provision strengthens the status of the Court by allowing for its management of environmental matters depending on the social or ecological circumstances. The 'green' court in New Zealand has the right to issue declarations, review decisions issued by regional and territorial authorities, and issue enforcement orders.[43]

It should be pointed out that the NZEC is dealing with appeals against decisions taken under the RMA on a *de novo* basis, which means that 'the Court is not constrained to re-hearing the evidence that was adduced at first instance,

[36] Ministry (2022): 21, 60.

[37] Warnock (2020): 37.

[38] Town and Country Planning Act (TCPA) 1977, No. 121, Part VIII. Cf. Article 247, Part 11, The Resource Management Act 1991, No. 69 (RMA).

[39] Pring, Pring (2016): 22. See Robinson (2018): 29.

[40] Ceri Warnock (2014: 508) used in this scope the term 'expert knowledge of the factual context'.

[41] Birdsong (2002): 3 and 4.

[42] Birdsong (2002): 61–62.

[43] More information Birdsong (2002): 28–32.

rather there is a new hearing and a decision is made on the merits'.[44] Where this is consistent with the principles of efficiency and fairness, the procedure may be conducted without unnecessary procedural formalities.[45] This provision takes on importance, especially in the face of serious environmental risks and disasters. The NZEC has the authority to conduct mediation, which is an innovative solution combining the function of a traditional mediator with the role of a judge focused on the results of a substantive trial.[46] However, the application of the provisions of the Act may be significantly impeded in circumstances where ecological issues 'collide' with economic or political factors (e.g. local authorities issuing decisions with a view to attracting potential voters).[47]

The Act, which is the basis of the NZEC's activities, adopts the principle of sustainable development as the goal of profiling economic, social and environmental activities.[48] The interpretation of the law can contribute to improving the system for the management of natural resources. This is confirmed by the provision in which, pointing to the preservation of natural and physical resources, the phrase 'reasonably foreseeable needs of future generations'[49] is used. In turn, for example, the NZEC decision of September 2020 indicated the determination of the geographical scope of the landscape in order to determine the areas most at risk of degradation as a result of residential development.[50] In New Zealand, the environmental management system is based on harmonizing various levels, from national to regional. Under the Act, the authorities should take measures to preserve natural areas and landscapes of outstanding natural features, prevent their inappropriate subdivision and use, protect natural habitats of plants and animals in particular endemic species, and effectively manage the risks associated with anthropogenic threats or natural hazards (e.g. natural disasters) [Article 6 pt.'b', 'c', 'h']. The Act provides for the protection of customary law and historical heritage,[51] which indicates that the jurisdictional activity should take into account the ontological bond of indigenous/local people with nature.

According to traditional views, there is a genealogical relationship between nature and people. For the indigenous people of New Zealand, the objects and creations of nature are also ancestors.[52] The legal acts of New Zealand are under the strong influence of traditional terminology, for example the Act of 20 March 2017 used the term taken from the Maori language 'Te Awa Tup-

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[44] Warnock (2014): 509.

[45] Article 269(2), Part 11, RMA (1991).

[46] Article 356, Part 14, RMA (1991). See Higgs (2007): 61.

[47] Harris (1993): 70.

[48] Legal basis Article 5(1), Part 2, RMA (1991).

[49] Article 5(2) pt. 'a', Part 2, RMA (1991).

[50] Pt. 28, New Zealand Environment Court (NZEC), Decision No. [2020] NZEnvC 158 between Upper Clutha Environmental Society Incorporated (ENV-2018-CHC-056) and Queenstown Lakes District Council, Date of Decision: 21 September 2020. Interim Decision of the Environment Court, Topic 2: Rural Landscapes – Priority Areas, Decision 2.5. (2020): 13.

[51] Article 6 pt. 'f' and 'g', Part 2, RMA (1991).

[52] See Magallanes (2020): 1–19.

ua', which means the Whanganui River.[53] On the same principle, in official documents the environment court, apart from the name in English, holds the designation 'Te Kōti Taiao o Aotearoa' in Maori. The Maori people's legal system was influenced by the customary norms of *tikanga Māori*. The activities of the NZEC can, therefore, be considered as an institutional manifestation of the impact of the judicial authority influenced by indigenous culture and legal tradition. The NZEC contributes to the creation of a coherent environmental case law (national environmental jurisprudence) for all residents, including indigenous people.[54] This can be seen as a form of implementing environmental justice by guaranteeing access to a specialized environmental court. Access to the court is facilitated by modern technologies enabling remote communication in real time (e.g. teleconferencing).

The above arguments should be supplemented with the information that in New Zealand, sustainable development measures are referred to as 'the government's view of the way forward'.[55] If there is social participation, actions in this area may become a bond for ecological safety in the long term. The health and integrity of ecosystems are protected, while simultaneously ensuring the well-being of present and future generations. Indigenous people are particularly predestined to participate in environmental protection activities, as their lives are closely embedded in the natural tissue. Indigenous people are depositaries of traditional knowledge and skills passed on between generations. In New Zealand, however, there is a need for greater involvement of the native inhabitants in the implementation and monitoring of sustainable development measures.[56] Environmental judges, through their judicial function and interpretation of the law, can contribute to ensuring the coherence of environmental programmes and the activation of a social partnership for the protection of nature.

VI. CONCLUSIONS

The problem of 'green' justice is complex and heterogeneous. Depending on the national legal system, the adopted regulations may take various shapes. There is a diversity of species of plants and animals in nature. However, the multiplicity and diversity of legal regulations do not necessarily mean diversification. At the basis of the formation of contemporary legal regulations, there is indeed a common goal – the modernization of nature conservation measures. The search for more effective solutions is increasingly leading to changes in the law and the creation of new institutional infrastructure.

In the case of legal acts that contain provisions on the establishment of environmental courts as part of their substantive content, it should be noted

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[53] Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, Public Act 2017, No. 7, 20 March 2017.

[54] Pring (2016): 22.

[55] Department of Prime Minister and Cabinet (in Māori: Te Tari o te Pirimia me te Komiti Matua), Sustainable Development for New Zealand Programme of Action; Wellington (2003): 5.

[56] Jollands, Harmsworth (2007): 716–717.

that legal norms may have been established in other social, economic and environmental conditions. In countries where environmental courts are established, there will normally be a need to revise existing legislation to ensure compatibility with new regulations and legal institutions. The above circumstance is connected with the need to analyse the powers of other bodies and institutions that already have the competence to adjudicate or issue decisions on environmental matters, so that there is no collision or marginalization of the judicial activity of the environmental court.

More and more often, economic determinants are at the forefront for political decision-makers. Economic factors disrupt the operation of the principle of sustainable development, which requires the integration of environmental protection systems with social and economic development. Inaction in this respect may lead to treating environmental protection as a mere addition to the state management system, instead of constituting the *spiritus movens* of pro-environmental activities for present and future generations.

The article emphasized that the integration of sustainable development into the economy and social development should be based on the protection of the biological structure of ecosystems. Following that reasoning, accepting the intrinsic value of nature could reinforce the implementation of the principle of sustainable development in the ethical perspective. The ethics of protection makes one realize that humans should use natural resources only to the extent necessary for life, and not in an excessive and exploitative manner. Actions to prevent discrimination and social inequalities contribute to a more effective implementation of the right to the protection of the environment in intergenerational terms. Environmental justice through environmental institutionalization supports the protection of planet Earth, which is our common 'home'.

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